UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:04-cr-14-01

JAMES ARNOLD GUNNINGS, JR.)
Petitioner,)
v. UNITED STATES OF AMERICA)) ORDER
Respondent.)))

THIS MATTER is before the Court on Defendant's Petition for Declaratory Relief Pursuant to *Nunc Pro Tunc* Designation (Document #66).

This court sentenced Defendant on May 17, 2006 (Document #44). On or about January 14, 2008, Defendant entered a plea of guilty to two charges in state court. First, Defendant pleaded guilty to conspiracy to commit armed robbery for which he received a 58 to 79 month sentence. Second, Defendant pleaded guilty to conspiracy for possession of a firearm by a felon for which he receive a 14 to 17 months sentence, to run consecutively. In a hearing held on February 8, 2010, this Court recommended that the Bureau of Prisons designate the state facility in which Defendant was serving his sentence as the place of serving his federal sentence. (Document #65).

While this Court has the power to make a recommendation as to whether the state facility in which Defendant is serving a state sentence should be designated as the place of his federal sentence, any such recommendation is not dispositive. Pursuant to federal law, the Bureau of Prisons has the responsibility of making such a *nunc pro tunc* designation. *See* 18 U.S.C. § 3621; *see also Barden v. Keohane*, 921 F.2d 476 (3rd Cir. 1991). A district court's recommendation is

one of five factors the Bureau of Prisons must consider in making a *nunc pro tunc* designation. *See* 18 U.S.C. § 3621. This Court reviews the decision of the Bureau of Prisons for abuse of discretion. *Barden v. Keohane*, 921 F.2d 476, 478 (3rd Cir. 1991).

On August 17, 2010, after analyzing the factors as set forth in 18 U.S.C. § 3621, the Bureau of Prisons determined that a *nunc pro tunc* designation was not appropriate. Specifically, the Bureau of Prisons noted that the nature of Defendant's offense and Defendant's prior criminal history weighed against a *nunc pro tunc* designation while the recommendation of this court weighed in favor of said designation.

Having reviewed the decision of the Bureau of Prisons, this Court finds that the Bureau of Prisons did not abuse its discretion in denying Defendant's request for a *nunc pro tunc* designation.

NOW, THEREFORE, IT IS ORDERED that Defendant's Petition for Declaratory Relief Pursuant to *Nunc Pro Tunc* Designation be, and hereby is, DENIED.

Signed: February 2, 2011

Richard L. Voorhees United States District Judge